

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

DAVID L. FISH, JR.,

Plaintiff,

v.

MARINE BIOLOGICAL LABORATORY,

Defendant.

Civ. A. No. 05-11619-RGS

**JOINT STATEMENT OF THE PARTIES IN PREPARATION FOR INITIAL
SCHEDULING CONFERENCE**

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure and Local Rule 16.1 of the Local Rules of the United States District Court for the District of Massachusetts, counsel for defendant the Marine Biological Laboratory (the “MBL”) and plaintiff David L. Fish, Jr. (“Plaintiff”), certify that they have conferred concerning, among other things: the nature and basis of their claims and defenses, the possibility of a settlement of the case, preparing an agenda for matters to be discussed at the scheduling conference, and preparing a proposed pretrial schedule for the case, including a plan for discovery.

I. PROPOSED PRETRIAL SCHEDULE

The parties anticipate that discovery may be conducted along the following schedule:

Deadline¹

Event

30 days after ruling

Complete automatic discovery consistent with Fed. R. Civ. P. 26(a)(1) and Local Rule 26.2(A).

40 days after ruling

File amendments to pleadings (including amendments to add parties), third-party actions,

¹ The deadlines below are listed as the number of days after the Court rules on MBL’s Motion for Judgment on the Pleadings.

	cross-claims and counterclaims. Together with the Complaint and Summons, counsel granted leave to add a party or third party shall serve on such party a copy of this Scheduling Order.
90 days after ruling	Completion of all discovery, other than requests for admissions and expert disclosures, except for such discovery not reasonably anticipated by the parties.
100 days after ruling	Service of requests for admissions.
110 days after ruling	Service of all responses to requests for admissions; Service of all expert disclosures, if any, pursuant to Fed. R. Civ. P. 26(a)(2).
120 days after ruling	Service of any responses and objections to expert disclosures pursuant to Fed. R. Civ. P. 26(a)(2).
135 days after ruling	File any dispositive motions under Fed. R. Civ. P. 56, with all supporting documents.
149 days after ruling	File any oppositions to dispositive motions under Fed. R. Civ. P. 56, with supporting documents.
163 days after ruling	File all replies to oppositions to dispositive motions under Fed. R. Civ. P. 56, with supporting documents.
To be determined	A pretrial conference, if necessary following decision on dispositive motions, with all dates following such pretrial conference, including expert disclosure and discovery, to be scheduled at the Court's discretion.

B. Position on Phased Discovery. The parties do not believe it is necessary for discovery to proceed in "phases," except as set forth in its proposed discovery schedule above.

C. Motion Schedule. The parties propose that any dispositive motions, together with all supporting documents shall be served no later than 135 days after the date on which the Court rules on the MBL's Motion for Judgment on the Pleadings. All oppositions with supporting documents shall be served no later than 144 days after the date on which the Court rules on the MBL's Motion for Judgment on the Pleadings. All replies to oppositions with supporting

documents shall be served no later than 163 days after the date on which the Court rules on the MBL's Motion for Judgment on the Pleadings.

III. TRIAL BY MAGISTRATE JUDGE

Neither party consents to referral of this matter for trial by a magistrate judge.

IV. ALTERNATIVE DISPUTE RESOLUTION

The parties have conferred to consider the resolution of the litigation through the use of alternative dispute resolution programs, such as mediation, arbitration and the alternative dispute resolution programs outlined in Local Rule 16.4. Neither party consents to referral of this matter to alternative dispute resolution.

V. CERTIFICATIONS UNDER LOCAL RULE 16.1(D)(3)

The MBL's certification required by Local Rule 16.1(D)(3) and Plaintiff's certification required by Local Rule 16.1(D)(3) will be submitted under separate cover.

Respectfully submitted,

David L. Fish

The Marine Biological Laboratory

Pro se,

By its attorneys,

/s/ David L. Fish

/s/ Julie Murphy Clinton

David L. Fish, Jr.
63 Harriette Road
E. Falmouth, MA 02536

Jonathan D. Rosenfeld (BBO# 556172)
Julie Murphy Clinton (BBO# 655230)
Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, MA 02109
(617) 526-6000

Dated: September 16, 2005

CERTIFICATE OF SERVICE

I, Julie Murphy Clinton, hereby certify that on September 16, 2005, I caused a copy of the foregoing document to be served, by first class mail, upon plaintiff David L. Fish, Jr..

/s/ Julie Murphy Clinton